

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Sharon Few,
Plaintiff

v.


Civil No. 07-cv-427-SM

Liberty Mutual Insurance Company, et al.,
Defendants.

O R D E R

Re: (Document No. 39)
Defendants' Partial Motion to Dismiss

Ruling: Granted. For the reasons thoroughly and persuasively set forth in defendants' motion and supporting memorandum, the RICO counts described in the complaint (Counts III, IV, and VI) and the intentional infliction of emotional distress count (Count XI) are dismissed. Plaintiff's complaint fails to state a cause of action under RICO. See, e.g., Bessette v. Avco Financial Services, Inc., 230 F.3d 439 (1st Cir. 2000); Figueroa Ruiz v. Alegria, 896 F.2d 645, 650 (1st Cir. 1990); White v. Union Leader Corporation, et al., 2001 DNH 126 (2001) (corporate employees engaged solely in carrying out the regular affairs of the corporation fail to meet the "distinctiveness" [from the "enterprise"] test). The intentional infliction of emotional distress claim arising under state common law is preempted by ERISA, and, as well, the conduct alleged does not rise to the requisite level of extreme and outrageous conduct necessary to support an intentional infliction of emotional distress claim even if the cause of action was not preempted. See Jarvis v. Prudential Ins. Co. of America, 122 N.H. 648 (1982). The remaining claim (Count II) asserts a cause of action under ERISA for denial of plan benefits.


Steven J. McAuliffe
Chief Judge

October 11, 2007

cc: Sharon Few, pro se
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Jeffrey S. Brody, Esq.